



United States General Accounting Office
Washington, DC 20548

Office of the General Counsel

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July 28, 2000

The Honorable William V. Roth
Chairman
The Honorable Daniel Patrick Moynihan
Ranking Minority Member
Committee on Finance
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

The Honorable Bill Archer
Chairman
The Honorable Charles Rangel
Ranking Minority Member
Committee on Ways and Means
House of Representatives

Subject: Department of Health and Human Services, Health Care Financing
Administration: Medicare Program; Prospective Payment System for Home
Health Agencies

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Health and Human Services, Health Care Financing Administration (HCFA), entitled "Medicare Program; Prospective Payment System for Home Health Agencies" (RIN: 0938-AJ24). We received the rule on July 14, 2000. It was published in the Federal Register as a final rule on July 3, 2000. 65 Fed. Reg. 41128.

The final rule establishes requirements for the new prospective payment system for home health care agencies as required by section 4603 of the Balanced Budget Act of 1997, as amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999 and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999.

These requirements include the implementation of a prospective payment system for home health agencies, consolidated billing requirements, and a number of other related changes.

Enclosed is our assessment of HCFA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that HCFA complied with the applicable requirements.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is William Scanlon, Director, Health Financing and Public Health Issues. Mr. Scanlon can be reached at (202) 512-7114.

Robert P. Murphy
General Counsel

Enclosure

cc: Ms. Jacquelyn Y. White
Deputy Executive Secretary to
the Department
Department of Health and Human Services

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
HEALTH CARE FINANCING ADMINISTRATION
ENTITLED
"MEDICARE PROGRAM; PROSPECTIVE PAYMENT SYSTEM
FOR HOME HEALTH AGENCIES"
(RIN: 0938-AJ24)

(i) Cost-benefit analysis

HCFA performed a regulatory impact analysis of the final rule. Section 1895(b)(3)(A)(I) of the Social Security Act requires that the total amounts payable under the home health agencies (HHAs) prospective payment system be equal to the total amount which would have been paid if the system had not been in effect. Thus, subject to certain adjustments, such as factoring in the home health market basket, the rule is budget neutral.

However, using a simulation model, HCFA estimates that the redistributive effects of HHAs participating in the Medicare program associated with this final rule would range from a positive \$428 million for freestanding not-for-profit agencies to a negative \$363 million for freestanding for-profit agencies in FY 2001.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

HCFA prepared a Final Regulatory Flexibility Analysis in connection with the final rule. Most HHAs are considered small entities, either by their nonprofit status or by having revenues of \$5 million. HCFA notes that in a legislatively directed payment system that is required to be budget neutral, any effort to increase payments to those regions affected more by a national payment system necessarily results in a reduction to those regions that have historically restrained costs under home health.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

HCFA states that the final rule does not contain any intergovernmental or private sector mandates, as defined by title II of the Act, which would exceed \$100 million in any one year.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. 553. On October 28, 1999, HCFA published a Notice of Proposed Rulemaking in the Federal Register (64 Fed. Reg. 58134) and received 381 comments in response to the notice. In the preamble to the final rule, HCFA responds to the comments and the changes made to the proposed rule.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collections that are subject to review and approval by the Office of Management and Budget (OMB). All of the collections have already been approved and issued control numbers by OMB.

Statutory authorization for the rule

The final rule is issued pursuant to the authority contained in sections 1102, 1812(d), 1814(b), 1815, 1833(a),(i) and (n), 1861(v), 1871, 1881, 1883, and 1866 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), (i) and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

Executive Order No. 12866

The final rule was reviewed by OMB and, meeting the order's requirements, was found to be a "significant regulatory" action.

Executive Order No. 13132 (Federalism)

HCFA has determined that the final rule does not impose substantial direct compliance costs on state and local governments, preempt state law, or otherwise have federalism implications.